



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

PSS:DMP
F.#2011R02392

271 Cadman Plaza East
Brooklyn, New York 11201

April 11, 2012

By Federal Express and ECF

Scott L. Fenstermaker, Esq.
100 Park Avenue, 16th Floor
New York, New York 10017

Re: United States v. Sherieka Smalling
Criminal Docket No. 12-61 (JBW)

Dear Mr. Fenstermaker:

Pursuant to Rule 16 of the Federal Rules of Criminal Procedure, please find enclosed with this letter discovery in the above-referenced matter. This letter supplements the government's prior productions by hand at the April 2, 2012 status conference (CD-ROMs bearing Bates numbers KM 1 to KM 7) and under cover of a letter dated April 2, 2012 (CD-ROMs bearing Bates numbers KM 21 and KM 22).

Please also consider this letter to be the government's request for reciprocal discovery. Please contact me if you wish to arrange a time to inspect, copy and/or photograph the evidence and original documents discoverable under Rule 16.

I. The Government's Disclosures

A. Statements of the Defendant

The government is aware of the following statement made by Ms. Smalling to law enforcement officials: After being advised of her rights, Ms. Smalling indicated that she wished to speak to an attorney.

In addition, other statements made by Ms. Smalling are enclosed in the balance of documents produced, including statements made via email, cell phone and text message.

B. Prior Criminal History

The government is not aware of any prior criminal history for Ms. Smalling.

C. Documents and Tangible Objects

Enclosed are the following:

- A CD-ROM, Bates-numbered KM 8, containing email and login data and account information from the accounts dimpledon456@aol.com, kingkon1851@aol.com, and nikkinikki4real@aol.com;
- A CD-ROM, Bates-numbered KM 9, containing GPS data for the phone number 718-781-0714 for the time period November 23, 2011 to December 20, 2011;
- A CD-ROM, Bates-numbered KM 10, containing the results of a pen register for the phone number 718-809-0193 for the time period April 20, 2011 to June 17, 2011. This file can be opened in Windows Notepad;
- A CD-ROM, Bates-numbered KM 11, containing the results of a pen register for the phone 718-781-0714 for the time period August 22, 2011 to October 16, 2011. This file can be opened in Windows Notepad.
- A report of statements provided by defendant Kwan Miller following his arrest, Bates-numbered KM 12;
- A CD-ROM, Bates-numbered KM 13, containing records from American Express relating to credit card numbers identified in this case;
- A CD-ROM, Bates-numbered KM 14, containing recorded telephone calls of inmate Randy Hutchinson. You may direct your attention to calls on December 16, 2010 at 5:29 p.m., December 20, 2010 at 6:54 p.m., and January 8, 2011 at 1:43 p.m.;
- A CD-ROM, Bates-numbered KM 15, containing telephone records for the phone number 646-287-3199;
- A CD-ROM, Bates-numbered KM 16, containing consensually recorded telephone calls with Kwan Miller;
- A CD-ROM, Bates-numbered KM 17, containing a Forensic Toolkit Report relating to a review of a Western Digital Hard Drive pursuant to a search warrant. You may review the report by accessing the file index.htm. The entirety of this hard drive is available for review at your request;

- A CD-ROM, Bates-numbered KM 18, containing a Forensic Toolkit Report relating to a review of a Western Digital Hard Drive pursuant to a search warrant. You may review the report by accessing the file index.htm. The entirety of this hard drive is available for review at your request;
- Instructions, Bates-numbered KM 19 to KM 20, provided by AOL for reviewing email.

You may examine the physical evidence discoverable under Rule 16, including original documents, by calling me to arrange a mutually convenient time.

D. Reports of Examinations and Tests

The government will provide copies of reports of examinations and tests as soon as they become available.

E. Expert Witnesses

The government will comply with Fed. R. Crim. P. 16(a)(1)(G) by notifying you in a timely fashion of any expert the government intends to call at trial and by providing you with the expert's credentials and a summary of the expert's opinion.

At present, the government expects to call an expert to testify regarding the methods and practices of access device fraud. The identity, qualifications and the bases for the conclusions of any testifying expert will be provided to you when they become available.

F. Brady Materials

The government understands and will comply with its continuing obligation to produce exculpatory material as defined by *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.

Before trial, the government will furnish materials discoverable pursuant to Title 18, United States Code, Section 3500, as well as impeachment materials. See *Giglio v. United States*, 405 U.S. 150 (1972).

II. The Defendant's Required Disclosures

The government hereby requests reciprocal discovery under Rule 16(b) of the Federal Rules of Criminal Procedure. The

government requests that the defendant allow inspection and copying of (1) any books, papers, documents, photographs, tapes, tangible objects, or copies or portions thereof, which are in the defendant's possession, custody or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial, and (2) any results of reports or physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in the defendant's possession, custody, or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial or which were prepared by a witness whom the defendant intends to call at trial.

The government also requests that the defendant disclose prior statements of witnesses who will be called by the defendant to testify. See Fed. R. Crim. P. 26.2. In order to avoid any unnecessary delay, we request that you have copies of these statements available for production to the government no later than the commencement of trial.

The government also requests that the defendant disclose a written summary of testimony the defendant intends to use under Rules 702, 703, and 705 of the Federal Rules of Evidence. The summary should describe the opinions of the witnesses, the bases and reasons for those opinions, and the witnesses' qualifications.

If you have any questions or further requests, please do not hesitate to contact me.

Very truly yours,

LORETTA E. LYNCH
United States Attorney

By: /s/ Douglas M. Pravda
Douglas M. Pravda
Assistant United States Attorney
(718) 254-6268

Enclosures

cc: Clerk of Court (JBW) (w/o enclosures)